Regulation, customer protection and customer engagement

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Abstract

The UK utility regulation framework developed in the 1980s was intended to improve on the restrictive, inefficient and burdensome regulatory approach in the US. But the UK regulatory process has itself now become increasingly burdensome. Meanwhile, utilities and customer groups in the US and Canada have developed methods of negotiating and settling regulatory issues that more directly reflect the interests of customers, often embody incentive price caps as in the UK, and avoid unduly burdensome regulatory processes. There is now scope for UK regulators to learn from overseas. This paper summarises these developments. It then examines how three UK utility regulators – the CAA, Ofgem and Ofwat - are responding to them. Briefly, the CAA has moved firmly in this direction, but Ofgem and Ofwat have nominally rejected it while seeking to secure many of the benefits of the approach via a less committed process. There is scope for governments to encourage a regulatory approach that offers the prospect of better outcomes for customers and a less onerous process for all concerned.

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1. Ownership, competition and regulation

The UK regulatory framework developed in the 1980s was intended to improve on the restrictive, inefficient and burdensome US regulatory approach. Over subsequent years, UK utility regulation has a number of achievements to its credit. Privatisation, the promotion of competition and the imaginative use of incentive price caps have generally led to greater efficiency, price reductions and improved quality of service. However, the regulatory process has become increasingly burdensome and there are growing doubts as to how well it protects customers.

Meanwhile, utilities and customer groups in the US and Canada, encouraged by some regulators, have developed methods of negotiating and settling regulatory issues that more directly reflect the interests of customers, often embody incentive price caps as in the UK, and avoid unduly burdensome regulatory processes. There is now scope for UK regulators to learn from overseas. This paper summarises these developments. It then examines how three UK utility regulators – the CAA, Ofgem and Ofwat - are responding to them.

2. The US regulatory framework

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When the UK began to privatise its utilities, it looked at how the US regulated its privately owned utilities. The regulator approved price increases only if they provided a "just and reasonable return" on investment that was "used and useful". The regulator could step in at any time to seek price reductions whenever a company seemed to be making excessive profits.

All this might seem reasonable. However, closer examination by economists suggested at several reservations.

First, this was too much like a 'cost-plus' arrangement. There was little incentive for utilities to reduce costs if the savings had to be immediately passed on to customers. There was in fact an incentive to 'gold-plate' or 'pad the rate base'. Also, in setting prices the US framework was backward-looking rather than forward-looking. It looked only at 'facts' about actual expenses in a 'test year'. The regulator could not make judgements about the scope for future efficiency improvements or the need for future capital expenditure. This seemed a serious limitation at a time when increasing the efficiency of the hitherto nationalised industries was a key aim of policy in the UK.

Second, in many industries like airlines, telecoms and energy, US regulators enforced barriers to entry that maintained a monopoly and prevented competition. Customers were denied the protection that competition could provide against inefficient production techniques and misinvestment, against excessive prices and lack of innovation, and against regulators that might be unable or unwilling to act in the interests of customers.

Third, the US legal framework and litigation process seemed unduly bureaucratic and legalistic. Rate cases could take years to resolve, in some cases many years. This was time-consuming, expensive, inflexible and not conducive to the rapid modernisation that was needed in the UK.

3. The UK regulatory framework

In 1982, the Secretary of State for Industry, Patrick Jenkin, had the task to privatise British Telecom. He needed to reassure investors and customers so as to attract very considerable new investment into this rapidly changing sector. He was also conscious of the limitations of US regulation. He wanted something more flexible and evolutionary. He specified that British

Telecom should be regulated 'with a light rein'. For present purposes, the UK regulatory framework that was designed to meet this aim had three main elements.

First, the regulator was to allow and indeed promote competition wherever possible. This would give customers a choice and stimulate companies to greater efficiency and innovation. Second, where competition was not possible or not economic, an RPI-X incentive price cap was a simpler and more effective form of regulation than US rate of return control. Set for a fixed-term, it offered a greater incentive for the company to become more efficient and reduce its costs. Requiring prices not to exceed the rate of inflation less an 'X factor' provided assurance to customers and company alike. As efficiency improved, customers would benefit from further price reductions over successive price control periods. The price cap was simple to explain, and hopefully would be simple to set. The third element was the ability of the regulator and utility simply to agree a modification to the licence conditions (e.g a new price control) without the need for formal and adversarial legal proceedings. The regulator had the ability to refer the issue to the Monopolies and Mergers Commission (later the Competition Commission) if the utility declined to accept a modification proposed by the regulator.

4. UK regulation in practice

In the event, with a few exceptions, the novel UK policy turned out remarkably well throughout the privatised and regulated sector. The regulators have generally promoted competition both actively and effectively. This is less so in the water sector, but there is some scepticism about the scope for competition there, and Ofwat has been faced with an unenthusiastic series of ministers.

The record on removing price controls as competition develops has been mixed. Offer, Ofgas and Ofgem removed the controls on domestic gas and electricity prices within at most four years of opening those markets. In contrast, Oftel (later Ofcom) took some 22 years to remove the initial RPI-X price control on BT's retail prices. International comparisons (at least in electricity) suggest that those countries that have maintained price controls have thereby discouraged competition. The low point in the record must be the Government's overruling of the recommendation of the Civil Aviation Authority (CAA) to remove Stansted Airport's price control on the grounds that the Airport might have market power in future.

RPI-X price controls have generally provided very effective incentives. Operating costs have significantly reduced, and efficiency has improved. There has been very substantial capital

expenditure. Prices are generally lower, or at least lower than they would have been in the absence of these changes. Quality of service is higher. There has been innovation in techniques and in products.

Yet the UK approach, for all its advantages and potential flexibility, seems to have limitations in terms of process. The price control review process is especially and increasingly burdensome. Initially it took about a year, now it takes about three years - to set a five year control. The total length of regulatory documents issued during the price control review of the electricity distribution companies increased from about 250 pages when I did the first review in 1995, to about 500 pages in 2000, to about 2000 pages in 2005. A colleague has estimated that the length may have been about 3-4000 pages in 2010 – at least a twelve-fold increase. It has been said that the volume of annual information required by Ofwat increased tenfold between 2000 and 2010.[2]

The regulatory process is also intrusive and often a cause of conflict between companies, customers and regulators within each industry. There is minimal role for users and customers. Regulators are increasingly required to specify or approve quality of service standards and investment programmes on the basis of limited knowledge about customer preferences. The pressure for regulatory uniformity limits the ability to tailor regulation to particular circumstances. There is less innovation, less learning from experience, than one would expect in a competitive market.

Indeed, the burden of the typical UK approach is now so great that it rivals the burden of the US approach in the 1970s that we sought to avoid. If we had seen present UK regulation in action then, I suspect we should have been equally keen to avoid it.

5. Alternative approaches

Why has UK regulation run into such problems? The initial RPI-X regimes put a cap on the prices that the companies could charge, but left efficiency improvements and investment and innovation to the companies themselves. Increasingly, however, regulators have sought to specify in advance what levels and kinds of efficiency improvements, investment programmes and innovation could or should take place. Partly this is in response to tougher arguments from the companies, partly to avoid setting targets that seem to be too easily met.

[2] David Gray giving evidence to the All Party Parliamentary Water Group, *Utility Week,* 9 February 2011.

But how can regulators know what companies can achieve, and what customers want? In order to specify the desired outcomes, regulators have gradually taken upon themselves the discovery process traditionally undertaken by the competitive market. This is proving to be an increasingly challenging task.

Are there different and better ways of regulating? Since stepping down as electricity regulator, I have been exploring how regulation actually works in other jurisdictions, not least in the US and Canada. As in the UK, there has been greater focus on competition than in the past. Where there is no competition, the formal regulatory framework there has not changed much. However, in many jurisdictions the parties have nonetheless found ways to reduce or avoid the previous regulatory burden. Moreover, utilities and customers have secured outcomes that they themselves perceive as better than what the formal regulatory process would have delivered.

The key to this development has been the active involvement of the users and customers themselves, and/or their representatives, in negotiations with the regulated utility. The regulatory body no longer sees its role as taking all the decisions itself. Rather, its role is to facilitate discussion, negotiation and if possible agreement among the interested parties. The price control decision reverts to the regulator in the event that the parties fail to agree.

The ability of customers to call on the regulator, if necessary, to determine the price (and other terms) in effect removes the utility's ability to exercise monopoly power over its customers. The focus is therefore on discovering and providing what customers want at an acceptable price. The regulator thereby facilitates the market discovery process, even in the absence of competition. This obviates or reduces the need for a burdensome discovery process by the regulator itself.

6. Negotiated settlements in the US and Canada

In the US, negotiated settlements were pioneered by the Federal Power Commission (FPC). Following a Supreme Court decision that extended regulatory jurisdiction from 157 natural gas companies to 4365 independent producers, the FPC was suddenly faced with thousands of pipeline rate cases. In 1960 it was estimated that, even with tripled staff, the FPC would take at least 82 years to deal with the 3200 rate applications then filed.

As a means of coping with this backlog, the FPC encouraged settlements between the pipelines and their users. Users of interstate pipelines would typically be oil and gas producers, shippers and marketers, perhaps some generating stations, a few large final customers, and other interested parties including State Public Utility Commissions on behalf of smaller customers. The FPC's successor body, the Federal Energy Regulatory Commission (FERC), continued this policy. By 1980 settlements were reached in approximately two-thirds of all electric rate cases there, and in 1986 in over 70% of gas pipeline rate cases. Presently, no less than 90% of the rate cases at FERC are settled by the participants rather than determined by the Commission through the conventional litigation process.

There have been similar developments in some other parts of the US and in Canada. (Doucet and Littlechild 2006, Littlechild 2008a,b) The regulatory commissions have varied in their stance: some have been sceptical but most have been more sympathetic. The Florida Public Service Commission (FPSC) has accepted and indeed encouraged settlements. (Littlechild 2009a,b) Negotiations have generally been led by the Office of Public Counsel, whose duty is to protect the interests of customers. In Canada, too, the National Energy Board (NEB) has explicitly encouraged the parties to settle. (Doucet and Littlechild 2009) To facilitate agreement on one of the most difficult issues, the NEB initially set out annually how it would determine the cost of capital in the event that a rate change was referred to it.

In both these jurisdictions, settlement discussions have generally taken place independently of the regulatory commission (FPSC or NEB). In contrast, FERC Trial Staff play an active role in facilitating negotiation and settlement. (Littlechild 2011) 3 months after a pipeline files for a new tariff, Trial Staff analyse it and propose a first settlement offer. Trial Staff then lead discussions among the interested parties with a view to finding a mutually acceptable tariff. In recent years, agreement in principle has been reached in a median time of 2 ½ months after Trial Staff's first settlement offer, just before testimony would otherwise need to have been filed. Typically it takes a further 2 ½ months for the parties to finalise the wording of the settlement and to obtain the judge's certification that it is uncontested. It then takes about 3 months for FERC formally to approve it. This stands in contrast to litigated rate cases that typically take many years to conclude.

In other words, although the formal regulatory framework in the US may be as burdensome as it ever was, the parties have found a more effective way of operating within this framework. User groups and utilities have negotiated settlements of rates, and often other relevant issues such as investment and quality of service. Generally they do so by focusing on the main features of the control, including the 'bottom line', without having to agree in detail each

input into the calculation. Such negotiations have not only been less time-consuming, less costly and less uncertain than litigation. They have also been more flexible, more innovative and more closely tailored to the needs of particular users and customers. They have been the means of introducing significant price reductions, a series of fixed-term efficiency incentive programmes, and many other features over the last two decades. These settlements have thus introduced variants of the RPI-X incentive price caps that characterise UK regulation, and that improve on traditional US rate of return control.

In addition, the development of settlement processes has been associated with improvements in information provision and understanding within the industries, and better relationships between utilities and customers. In sum, both the process and the substance of these negotiated settlements better meet the needs of the parties than the approach and solutions determined by the regulatory commissions.

7. The CAA's constructive engagement

How have UK regulators responded to the growing concerns about burdensome regulatory processes and the question as to whether the process delivers the outcomes that customers really want? We may compare the policies of three of these regulators.

The Civil Aviation Authority (CAA) has made a limited but significant move in the direction of greater customer involvement and negotiated settlements, although perhaps not consciously copying the US approach. In response to dissatisfaction with previous price control processes, including concerns of the regulatory body itself, the CAA invited the airports and airlines to take forward some of the work usually carried out by the regulator, under a process of "constructive engagement". (CAA 2005) The specified work included traffic forecasts, quality of service requirements, and investment programmes. The CAA would retain responsibility for assessing operating costs, cost of capital and the final price control. It would ensure that the interests of passengers and future airlines were safeguarded, and would retain final responsibility for decisions. "But if an agreement can be better reached by the parties, the regulator is likely to have a preference for it."

The CAA considers that the outcome was generally satisfactory at Heathrow and Gatwick. Several broad agreements were reached. There was also an improvement in consultation and regulatory discourse. (Bush 2007)

The Competition Commission (2007) was more critical, though it was also critical of BAA's own planning procedures.[3] It was particularly concerned about significant increases in BAA's capex programme during its inquiry, about information and resource asymmetries, and the absence of a dispute resolution or arbitration procedure at each stage. Nevertheless, the Commission saw substantial merits in the constructive engagement process, noted that the airlines did too, and concluded that constructive engagement should be an ongoing process. When the Competition Commission was faced with the task of recommending a price control for Stansted, it decided to resurrect the constructive engagement approach. With the controversial issue of a new runway now deferred, the parties were able to reach agreement.

The CAA accepted that that there was scope for improvement in future. It put in place arrangements to provide for ongoing constructive engagement. It also adopted what it called a customer consultation approach in setting the price controls for national air traffic services (NATS). (CAA 2008) The new process reflected learning from the experience with the airport price control reviews. For example, the process specified more explicitly what was expected of the parties, including the process of interaction and the obligations and timetable for providing information. The consultation process was managed by a Customer Consultation Working Group (CCWG). It incorporated some new elements, notably in accommodating the interests of many smaller users. It widened the potential role of the engagement process, for example to propose incentive mechanisms.

This customer consultation approach proceeded smoothly and on time to a successful conclusion. Most stakeholders then indicated that they would like the process for the next airport price control process to build upon the NATS process. None suggested a reversion to the previous price control review process. (CAA 2010, paras 3.6, 3.7) Later, given the uncertainty surrounding the Government's new legislation on economic regulation, the CAA invited the parties to agree a one-year extension of the previous controls. Heathrow agreed with its airlines a cap for its capital expenditure programme; Gatwick agreed with its airlines a more comprehensive negotiated settlement, involving a tightening of the price cap from RPI+2 to RPI-0.5, in exchange for a new set of capital expenditure triggers. (CAA 2011 p. 6) CAA and the parties are now exploring a more enhanced negotiated settlements approach for the 2013-18 price control period.[4]

[3] Former BAA executive Mike Toms (2008) also expressed a critical view of the process.
[4] Australia and some states in Germany have also moved towards negotiated settlements between airports and airlines. (Littlechild 2011b,c)

8. Ofgem's RPI-X@20 Review

Ofgem has noted the achievements of the traditional UK regulatory approach but has also acknowledged some of the problems. Its RPI-X@20 Review extensively explored alternative approaches. (Buchanan 2005, 2008a,b) It accepted the case for an 'enhanced engagement' model, whereby customers, users and networks would engage in more discussion, and stakeholders would be given greater opportunities to influence Ofgem and network company decision-making. (Ofgem 2010a) The regulator was anxious not to be prescriptive, and companies would be encouraged to engage with stakeholders in a wide variety of ways, including on the development of their business plans. (Ofgem 2010b)

However, Ofgem concluded against moving towards negotiated settlement or constructive engagement. Its basic reason was that customer groups would be unwilling or unable adequately to reflect the interests of present and future customers.

> We do not think it is appropriate to delegate responsibility for agreement of network regulatory decisions to consumer representatives, network users or other parties. We have concerns that the interests of these parties are not sufficiently aligned, with those of final consumers (existing and future), to delegate primary responsibility to them to agree regulatory decisions. It is also not clear which body would be able to represent the interests of future consumers. While consumer representatives may be better placed to perform this role, we recognise that it is extremely difficult to develop a sufficiently full understanding of the diversity of consumer needs and interests to represent the entire consumer view accurately to make trade-offs between, what may be, competing views from different groups of customers. As such, consumer representatives may not be able to add value in assuming responsibility for agreement of regulatory decisions over and above the role that we currently play. We also have concerns regarding their current access to resources, the current levels of expertise of all but a very small number of individual consumer representatives and their appetite to engage in this way. (Ofgem 2009, para 5.2)

It is not as if there are no existing bodies that represent UK energy customers. For example, the Major Energy Users Council is supported by many energy-using companies, and there are other such groups. Chambers of Commerce represent smaller businesses. The statutory body Consumer Focus has a function to represent the views of consumers on consumer matters to regulatory bodies like Ofgem.

Would such bodies be properly able to represent customers in a negotiation? Access to expertise and resources is of course important. In some North American jurisdictions, the regulatory process provides support for participants where the regulatory body judges this appropriate. At FERC, Trial Staff provide an important input in proposing a first offer as a reasonable basis for settlement, and in being on hand to explain and discuss the issues and calculations involved.

Is there the "appetite of customer representatives to engage"? Hitherto, UK price control processes have not been conducive to customer engagement in this way. Why should companies negotiate settlements with customers if the regulatory body would ignore the outcomes? But with appropriate encouragement and access to expertise and information, and an understanding that arrangements negotiated with utilities would be respected, then customer representatives could be as keen to engage in the UK as they have been elsewhere.

Other regulators have certainly been alert to the need to protect those not at the negotiating table, including future market participants, but this has not proved an obstacle to encouraging customer negotiations. Thus, before approving negotiated settlements, US regulatory bodies have to assure themselves that the proposed rates are just and reasonable, and not unduly discriminatory or preferential. The negotiating parties therefore bear this in mind – and, if necessary, regulatory staff will bring this to their attention. Similarly, the CAA has been willing to modify the outcome of negotiations if necessary to protect the interests of those not present in the negotiations. It has consistently emphasised that it would be minded to adopt agreed outcomes "subject to the CAA's consideration of the extent to which the results from any customer consultation reflected the interests of passengers, cargo shippers and airlines not directly represented in such consultation". (CAA 2008, paras 5.48, 5.49) On this basis, the CAA introduced a positive incentive for BAA to improve quality of service, beyond what the airlines considered necessary for their own purposes.

It is true that Ofgem has a principal objective "to protect the interests of existing and future consumers". However, the statutes qualify this in various respects. "The interests of such consumers are their interests taken as a whole, including their interests in the reduction of greenhouse gases and in the security of the supply of gas and electricity to them." Ofgem must have regard to "the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas", as well as to "the need to secure that licence holders are able to finance the activities which are the subject of obligations on them" and "the need to contribute to the achievement of sustainable development". It must "promote efficiency and economy" on the part of licensees. It must "secure a diverse and viable long-term energy supply, and … have regard to the effect on the environment." In addition, it must have regard to "certain statutory guidance on social and environmental matters issued by the Secretary of State".

Given the multitude of obligations on Ofgem, not to mention the political and media pressures to which any regulatory body is necessarily subject, is such a regulatory body *better* able to

understand and represent the interests of present and future customers than the bodies that actually represent present customers? Experience in jurisdictions where negotiated settlements are common suggests that customers themselves do not accept this. Nor did the UK Competition Commission in the case of airports and airlines.[5] Precluding the use of negotiated settlements therefore limits the extent to which customers can act to seek the outcomes they themselves prefer. It removes a protection, which has developed in the US, against the 'regulator knows best' philosophy. It seems likely to lead to more investment and expenditure, and higher prices, than customers themselves would be willing to choose. It remains to be seen whether Ofgem's proposed 'enhanced engagement' model can provide the same degree of protection for customers.

Meanwhile, the Government is in course of reviewing Ofgem and Ofwat. Evidence put to its review indicates a concern about undue bureaucracy and regulatory burden. The Government's response mentions the scope for learning from regulatory experience overseas. (DECC 2010) Surprisingly, it does not mention negotiated settlements.

9. Reviews of regulation in the UK water sector

Regulation in the UK water sector has been - and still is being - extensively reviewed. Many issues have been covered, not least competition, where there are divided views but some pressure for at least extending retail competition to a larger number of customers. On the specific issue of customer involvement, a number of stakeholders and commentators, including Walker (2009) and Cave (2010) as authors of recent reviews, have recommended introducing more formal constructive engagement.

Similarly, the interim findings of David Gray's review of Ofwat for Defra seem sympathetic to a move towards negotiated settlements, or more generally to a greater role for customers and users instead of greater involvement by the regulator. (Gray 2011) 'Options for consumer representation' and 'need for major simplification of annual reporting and price control process' are two of five issues to address. It is "clear to all that the regulatory burden has increased massively. …Ofwat has committed to reducing the burden, but there is a lack of

[5] "We took the view that the airport's airline customers are generally in a much better position than the regulator, the CAA, to suggest what development is needed at the airport, even recognising that these interests might, on occasion, diverge from the interests of future airlines and passengers, whose interests should also be represented….We considered whether the interests of potential new airlines at the airport or passengers might deviate from the interests of current airlines in these decisions, but we found no reason to believe that they did." (Competition Commission 2008 paras 23, 24)

trust between Ofwat and companies. A major culture change is needed on both sides." At the same time, the review identifies as an argument for retaining CCWater that "the trend towards constructive engagement/negotiated settlements seems likely to continue and CCWater is well placed to do this".

CCWater (the Consumer Council for Water) has a statutory role to represent the interests of water and sewerage customers, and in doing so to have regard to the interests of specified sets of vulnerable customers. It has played an active and constructive role in previous price control reviews, not least by encouraging a Quadripartite Working Group process. The judgement that it is well placed to participate in a constructive engagement or negotiated settlement approach is spot on.

Ofwat's own view has evolved over time. It explored the implications of this approach, and amongst many other inputs invited me to review the literature and experience. In October 2010 Ofwat described the approach positively, and undertook to consider the matter further. (Ofwat 2010) In April 2011 Ofwat declared that "Customer engagement is essential to achieve the right outcomes at the right time and at the right price". (Ofwat 2011) It explained at some length that "engagement means understanding what customers want and responding to that in plans and ongoing delivery", that "good engagement with customers can legitimise the price setting process" by influencing companies' plans, helping them to demonstrate that they have delivered value for money, ensuring that the price limits represent a price and service package that customers and society want and are willing to pay for, and much more.

In Ofwat's view, it is the companies' responsibility to engage with customers, customers and their representatives must be able to challenge the companies' plans throughout the process, and engagement should reflect the particular circumstances of each company. The final decision on price limits is nonetheless entrusted to Ofwat.

All this seems encouraging. It is what one would associate with negotiated settlements and constructive engagement. Yet Ofwat explicitly rejects these approaches. It says that "the process is onerous and requires substantial commitment from any customer or negotiator". This is odd, since these approaches have been adopted elsewhere precisely because they are less onerous than the conventional approach. And Ofwat's expectation of customers' commitment in its own proposed process is nothing if not substantial.

Meanwhile, progress is being made elsewhere. The Water Industry Commission for Scotland has indicated its intention to base its forthcoming price control review on a process of customer negotiation with Scottish Water. (Sutherland 2010) This approach is currently being implemented, with the active involvement of Waterwatch Scotland on behalf of customers.

10. Conclusions

UK utility regulation, based on competition and the RPI-X incentive price cap, was designed to protect customers and to operate 'with a light rein', certainly with a lighter rein than utility regulation in the US. In many respects UK regulation has delivered excellent results, but it has become transformed into 'heavy handed regulation', just as heavy if not heavier than in the US.

Meanwhile, regulators, utilities, customer groups and other interested parties in the US have discovered a practical way around the legal bureaucracy. Utilities are encouraged to discuss their proposals with market participants. The aim is to understand the products and investment programmes required by customers, and the costs of delivering the required goods and services, with a view to agreeing prices instead of requiring an expensive, time-consuming and uncertain regulatory procedure. The regulator stands by to determine the outcome if the parties fail to agree, and this is a factor that encourages rational discussion and agreement.

With negotiated settlements, the regulatory burden is generally lower. The outcomes more closely reflect the needs of customers themselves. The scope for innovation is greater because there is no longer the same pressure for regulatory uniformity from one utility to another. Settlements would allow different approaches to be tried.

These alternative approaches involve the regulator facilitating rather than replacing the market discovery process. If we had been aware of this idea in the early 1980s, I suspect we would have considered it an attractive way forward. Admittedly there was a need at that time to demonstrate a tangible form of regulation, and the requisite customer bodies were not then in existence. But with the benefit of experience here and overseas, and the emergence of customer bodies, we can now see the possibility of a more enlightened and effective form of utility regulation, better able to identify and protect the interests of customers, and operating with a lighter rein than the present one has turned out to have. The CAA has moved firmly in

this direction, but Ofgem and Ofwat have nominally rejected it while seeking to secure many of the benefits of the approach via a less committed process.

Governments in the UK and elsewhere have the ability to encourage or discourage this potential next step in the development of utility regulation. For example, the Alberta Energy and Utilities Board Act 1995 (s132) provides that ‘‘*the Board must recognize or establish rules, practices and procedures that facilitate negotiated settlement*’’. This would be a useful encouragement for a regulatory approach that offers the prospect of better outcomes for customers and a less onerous process for all concerned.

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